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Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, pursuant to General Assembly resolution 61/232.

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Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The present report is submitted in accordance with General Assembly resolution 61/232.

The Special Rapporteur welcomes the decision of the Government of Myanmar to reconvene the National Convention for its last session on 18 July 2007, to finish laying down principles for a new constitution as part of a seven-stage road map to democracy. He remains concerned, however, at the lack of opportunity for effective and genuine participation by the National League for Democracy (NLD) and ethnic groups, which have deliberately chosen not to participate owing to the lack of transparency and meaningful input.

He has repeated on several occasions that there will be no authentic democratic transition in Myanmar until all political prisoners are released. Given the importance of the last phase of the National Convention, he deplores the extension of the house arrest of the NLD General Secretary and the continued detention of other political leaders. At a time of such importance to the political reform process and in view of the need for reconciliation, such severe treatment of senior ethnic nationality leaders sends a very counterproductive signal, shocking many citizens and human rights observers.

The human rights concerns enumerated in the present report are largely very similar to those highlighted by the Special Rapporteur last year. The Special Rapporteur deplores the fact that the Government, despite several requests, has not invited him to visit the country. For this reason he was not able to assess any improvements or verify the accuracy of the allegations received from credible sources.

Severe restrictions on fundamental freedoms are imposed on political activists and human rights defenders. As of 27 June 2007, the number of political prisoners was estimated at 1,192. Throughout the country communities are subjected to patterns of abuse by members of the military who, in order to assert greater central government control, and often to implement national development projects, resort to forced labour, the seizure of property and assets and the forced relocation of populations, particularly in the border areas where ethnic nationality groups reside.

The lack of an effective commitment by the Government of Myanmar to respond to the human rights situation continues to raise serious concerns. At the national level, the capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hindered by sustained impunity. The restrictions on the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses is also a matter of concern.

The Special Rapporteur also takes note with great satisfaction of the Understanding between the International Labour Organizations and the Government of Myanmar, concluded on 26 February 2007, to provide a mechanism to enable victims of forced labour to seek redress.

The Special Rapporteur has also noted concrete developments which he considers to be significant milestones in the fight against impunity in Myanmar. These include the establishment of a national redress mechanism to receive complaints of forced labour, and the dialogue initiated by the Special Representative of the Secretary-General for Children and Armed Conflict with the Government regarding the development of an action plan to halt recruitment of child soldiers and to develop reintegration programmes and the setting up of a national mechanism to report on human rights violations committed against children during armed conflict. These mechanisms should lead to greater access to currently restricted areas for the provision of humanitarian assistance, as well as the monitoring of violations.

The Special Rapporteur is convinced that Myanmar would benefit from more active cooperation with his mandate, now under terms of reference that have been redefined by the Human Rights Council. He insists that it is his obligation to go public about allegations of human rights violations, but that this does not exclude a constructive and continuous dialogue with the Government. These two elements of his mandate can contribute to a new dynamic for the improvement of the situation of human rights in the country.

As indicated by the Special Rapporteur in his previous report, it will not be easy for Myanmar to promote political transition and basic human rights. The collaboration of the United Nations and the international community are essential to support the efforts of the Government and civil society.

In his recommendations, the Special Rapporteur encourages the international community to promote a framework of principles to enable Member States to pursue a plurality of strategies and cooperation with the Government of Myanmar in accordance with their particular strengths and capacities. It is urgent that the international community build on existing programmes of humanitarian assistance and support health, education and human rights, in particular through support to the development of civil society.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission on Human Rights in its resolution 1992/58[1] and extended in resolution 2005/10.[2] At its fifth session, the Human Rights Council decided to extend the mandates of the special procedures of the Commission on Human Rights until they could be considered by the Human Rights Council according to its annual programme of work (resolution 5/1 of 18 June 2007, annex, appendix I). The present report is submitted in accordance with General Assembly resolution 61/232.

2. Since he assumed the mandate in December 2000, the Special Rapporteur has visited the country on six occasions at the invitation of the Government; however, he has not been allowed to conduct a mission to Myanmar since November 2003. While he has not been granted access to the country during the period covered by this report, he has continued to fulfil his mandate to the best of his ability based on information collected from a variety of independent and reliable sources. Throughout the seven-year period of his mandate, he has continued to receive substantiated reports of grave human rights violations. While 72 communications have been sent to Myanmar since 2004, the Government has replied to only 14 of them.

3. The Special Rapporteur does, however, take note of recent replies by the Government to official communications from other special procedures of the Council. He finds this development encouraging and urges the Government to continue its dialogue with the Special Rapporteur and other special procedures.

4. Building on the Special Rapporteur's previous reports, the present report focuses on the main pattern of human rights violations that he has identified during the period from 12 January to 31 July 2007.

II. Activities of the Special Rapporteur

5. The Special Rapporteur presented his report (A/HRC/4/14) to the Human Rights Council in March 2007. While in Geneva, he met several times with representatives of the Government of Myanmar and held consultations with representatives of Member States, officials of United Nations agencies, representatives of civil society organizations and members of the academic community.

6. During the reporting period, the Special Rapporteur was not in a position, as in the past, to conduct a mission in the region as the decision by the Human Rights Council to extend his mandate was still pending.

7. On 20 March 2007, the Special Rapporteur participated in an exchange of views on the human rights situation in Myanmar organized by the Subcommittee on Human Rights of the European Parliament in Brussels.

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[1] *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap. II, sect. A.

[2] Ibid., *2005, Supplement No. 3* (E/2005/23), chap. II, sect. A.

8. The Special Rapporteur continued to have regular contacts with the Permanent Mission of Myanmar to the United Nations Office at Geneva. He shared his findings with the United Nations High Commissioner for Human Rights, the Executive Office of the Secretary-General, the United Nations Department of Political Affairs, the Special Adviser to the Secretary-General on the International Compact with Iraq and Other Political Issues as well as the Special Representative of the Secretary-General on Children and Armed Conflict. While in the United States of America in early June 2007, he met with the latter two officials.

III. Recent developments

9. The Special Rapporteur notes that important changes are taking place in the country as a result of political and economic developments, including the future adoption of a new constitution that will redefine the political structures of the country and a number of ongoing development projects that would profoundly modify the landscape in Myanmar. Whether these changes will be positive depends on the ease of the political transition. The involvement by foreign investors and other international actors in Myanmar is uncertain because of the political instability of the regime. Lack of access to conflict areas by United Nations human rights mechanisms and other relevant international agencies and associated personnel exacerbates an already difficult human rights situation. The long-standing culture of non-accountability, which is deeply rooted in the structures of the regime and national institutions, also seriously obstructs the rule of law and the administration of justice.

10. The Special Rapporteur welcomes the decision to reconvene the National Convention and its resumption on 18 July 2007 for its last session, to finish laying down principles for a new constitution as part of a seven-stage road map to democracy. He nevertheless remains concerned at the lack of opportunity for effective and genuine participation by the National League for Democracy (NLD) and some ethnic nationality groups that had chosen not to participate because of the lack of transparency and meaningful input. He also regrets that the international press was not allowed to participate in the opening ceremony as planned.

11. In view of the complexity of the challenges facing a country emerging from long periods of armed unrest, the question remains whether the National Convention can be welcomed as an effective step towards a civilian Government and, most importantly, towards a peaceful settlement of the conflict. The ways in which the Government and some of the main armed ethnic nationality parties will or will not use the Convention process as a mechanism for moving beyond their current ceasefires will be crucial. The Special Rapporteur would, for example, welcome the inclusion in the draft constitution of limited autonomy arrangements and structures for continued dialogue between the central Government and the major armed ethnic parties.

12. The Special Rapporteur has observed with satisfaction that the United Nations system has established mechanisms to facilitate better communication among the political, humanitarian and human rights sectors to address the situation in Myanmar. This represents an unprecedented opportunity for the United Nations to implement a concrete approach to addressing the main elements of the crisis in the country. In this context, the Special Rapporteur welcomes the designation by the

Secretary-General on 22 May 2007 of his Special Adviser on The International Compact with Iraq and Other Political Issues, Ibrahim Gambari, to continue to pursue the good offices mandate on Myanmar entrusted to the Secretary-General by the General Assembly. Having already twice visited Myanmar in the context of the good offices mandate, the Special Adviser can continue to play a particularly useful role by working in coordination with relevant parts of the United Nations in order to support Myanmar's efforts in implementing relevant General Assembly resolutions, including in the area of human rights. The Special Rapporteur urges the Government of Myanmar and all relevant parties to the national reconciliation process to continue to cooperate with the Special Adviser in the discharge of his good offices, with a view to making tangible progress towards democracy and the protection of human rights in Myanmar.

13. The Special Rapporteur also welcomes the more direct engagement of the Office for the Coordination of Humanitarian Affairs (OCHA), through the designation of a United Nations Humanitarian Coordinator for Myanmar and the implementation of a number of operational and policy measures that were agreed to in the course of a mission by Assistant Secretary-General Margareta Wahlstrom in April 2007. He further expresses his full support for the work of the Special Representative of the Secretary-General on Children and Armed Conflict, Radhika Coomaraswamy, including her visit to Myanmar from 25 to 29 June 2007.

14. On 12 January 2007, China and the Russian Federation vetoed a draft resolution on Myanmar tabled at the Security Council by the United States of America and the United Kingdom of Great Britain and Northern Ireland. The vote was 9 in favour and 3 against, with South Africa joining in the opposition. Indonesia, Qatar and the Republic of Congo abstained.

15. The Special Rapporteur took into careful consideration statements made by the delegations, as reproduced in the official records of the Security Council. He was pleased to note that South Africa, Qatar, Indonesia and the Russian Federation expressed the view that issues raised by the resolution should be dealt with by other United Nations bodies, including the Human Rights Council. In this context, the Special Rapporteur would like to welcome the decision of the Council, at its fifth session in June 2007 to extend the mandate on the situation of human rights in Myanmar.

16. The Special Rapporteur also noted with satisfaction that China "supports continuing efforts on the part of the Myanmar Government and all parties in the country aimed at inclusive dialogue and national reconciliation" and "will, as always, support the ASEAN [Association of Southeast Asian Nations] in playing a leading role in addressing the issue of Myanmar (see S/PV.5619)". During its twelfth Summit held in January 2007 in Cebu, Philippines, ASEAN encouraged Myanmar "to make greater progress towards national reconciliation" and "called for the release of those placed under detention and for effective dialogue with all parties concerned".[3] As the High Level Task Force embarks upon the drafting of the ASEAN Charter, to be completed in time for the thirteenth ASEAN Summit in Singapore next November, the Special Rapporteur believes that this process provides a vehicle for ASEAN members and their partners to further encourage the

[3] Statement by the Chairperson of the twelfth Summit of the Association of Southeast Asian Nations, H.E. Gloria Macapagal-Arroyo, President of the Philippines, Cebu, Philippines, 13 January 2007. Available at www.aseansec.org/19280.htm.

Government of Myanmar to speed up democratic reforms with due respect for human rights. The Special Rapporteur is pleased to learn that Myanmar joined the ASEAN foreign ministers on 30 July 2007, during the ASEAN Ministerial Meeting in Manila, in agreeing to include a provision in the draft of the Charter mandating the creation of a human rights body.

17. As noted in the report of the Eminent Persons Group on the ASEAN Charter, respect for human rights and fundamental freedoms and international humanitarian law should be an integral part of the objectives and principles to be included in the ASEAN Charter.[4] The blueprint for the Charter that was endorsed by ASEAN members in Cebu on 13 January 2007 offers an important means of bringing democratic changes with due respect for international human rights law, including through regular consultation with ASEAN parliamentarians, civil society organizations, human rights groups and other stakeholders.

18. In its report, the Eminent Persons Group also discussed the possibility of setting up an ASEAN human rights mechanism. The Group noted that this worthy idea should be pursued further, in particular to clarify how such a regional mechanism can contribute to ensuring respect for and protection of the human rights of every individual in every member State. In Africa, Europe and Latin America, regional human rights charters and mechanisms have emerged as an important complement to the international and national protection systems.

19. The Special Rapporteur would like to commend continuing efforts towards the adoption of a human rights-based ASEAN Charter and a genuine human rights mechanism for the region, which would provide for a stronger regional framework to address the human rights situation in Myanmar.

20. The Special Rapporteur took note with satisfaction of the meeting of the Minister of Communication and the Minister of Culture of Myanmar with the Deputy Assistant Secretary of State of the United States of America on 25 and 26 June 2007 in Beijing.

IV. Human rights issues of concern

A. Political prisoners

21. In his last report to the Human Rights Council, the Special Rapporteur noted with satisfaction the decision by the Government of Myanmar in January 2007 to release more than 40 political prisoners, including Min Ko Naing, Ko Ko Gyi, Pyone Cho, Min Zeya and Htay Kywe. However, since the decision was made — just prior to the examination of the draft resolution submitted by the United States of America to the Security Council — the Special Rapporteur has noted an increase in the number of political prisoners from January to June 2007: as of 27 June 2007, the number of political prisoners was estimated at 1,192.

22. On 16 February 2007, the Special Rapporteur issued a press release, expressing deep regret over the Government's one-year extension of the house arrest of Tin Oo, Vice-Chairman of NLD. On 10 May 2007, 14 special procedures

[4] Report of the Eminent Persons Group on the ASEAN Charter, December 2006, available at www.aseansec.org/19247.pdf.

mandates,[5] issued a press release in which they noted that the current term of detention of Aung San Suu Kyi, General-Secretary of NLD, was coming to an end on 27 May 2007, stressing that she had been detained for 11 of the last 17 years without charge or trial and held in isolation for the past four years. They called on the Government of Myanmar to release her unconditionally and to free all the remaining political prisoners. The experts stressed that the stability of Myanmar was not well served by the arrest and detention of several political leaders or by the severe and sustained restrictions on the exercise of civil, cultural, economic, political and social rights. In 2007, the Working Group on Arbitrary Detention was once again seized of the case of Aung San Suu Kyi. The results of the Working Group's deliberations will be submitted as part of the Working Group's annual report to the Human Rights Council in 2008.

23. On 25 May 2007, the Secretary-General stated that he deeply regretted the decision of the Government of Myanmar to extend once again the detention under house arrest of Aung San Suu Kyi, despite his direct appeal to Myanmar's senior leadership and the many public calls worldwide for her release (see SG/SM/11014).

24. The Special Rapporteur also deeply regrets the continued imprisonment of the distinguished poet and editor Win Tin, who spent his seventy-seventh birthday in a prison cell in Yangon. Imprisoned since 4 July 1989, he is now the longest-serving political prisoner in Myanmar.

25. The Special Rapporteur has repeated on several occasions that there will be no authentic democratic transition until all political prisoners are released. He also considers that it is part of his mandate to offer his assistance to the Government of Myanmar to address this complex issue. Given the importance of the last phase of the National Convention, he deplores the continued detention of NLD leaders and other leaders still serving draconian jail terms such as Kkun Htun Oo of the Shan Nationalities League for Democracy. At a time of such importance to the political reform process and in view of the need for reconciliation, such severe treatment of senior ethnic nationality leaders sends a very counterproductive signal, shocking many citizens and human rights observers.

26. As Myanmar embarks upon the final rounds of discussion at the National Convention, the Special Rapporteur believes it is of the utmost importance to explore ways and means of addressing urgently — and with pragmatism — the issue of political prisoners, whose release, would be seen as a good-faith gesture that would help tremendously to pave the way to democratization. While the Special Rapporteur will continue as a matter of principle, to advocate for the release of all political prisoners, the Government of Myanmar may wish to consider approaching

[5] The Special Rapporteur on the situation of human rights in Myanmar; the Special Representative of the Secretary-General on the situation of human rights defenders; the Working Group on Arbitrary Detention, the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; on the independence of judges and lawyers; on torture and other cruel, inhuman or degrading treatment or punishment; on violence against women, its causes and consequences; on freedom of religion or belief; on the situation of human rights and fundamental freedoms of indigenous people; on adequate housing as a component of the right to an adequate standard of living; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on the right to food; on trafficking in persons, especially women and children; and on the sale of children, child prostitution and child pornography.

this question in phases, as the Special Rapporteur suggested in a letter to the Government dated 18 July 2007, as follows:

- *Phase 1*. Priority should be given to political prisoners at risk, including women and those who are aged and ill. The release of female prisoners should be considered a high priority, bearing in mind that the Government of Myanmar recently submitted its combined second and third reports to the Committee on the Elimination of Discrimination against Women.
- *Phase 2*. The release of political prisoners in arbitrary detention who have not been charged or sent for trial.
- *Phase 3*. The release of political prisoners who have been charged with criminal offences for peacefully expressing their opinions through various means such as demonstrations, gatherings, publications, or by providing information to the press.
- *Phase 4*. The release of all remaining political prisoners, including those under house arrest.

27. The Government of Myanmar may also wish to consider the following principles when addressing the question of the release of political prisoners: (a) the releases could take the form of an amnesty, bearing in mind that this would not imply that those who will benefit from it have committed crimes; (b) the releases should be unconditional. Beneficiaries should not have to recognize any wrongdoing or refrain from engaging in peaceful political activities; and (c) the releases should be accompanied by an easing of the restrictions on the peaceful exercise of fundamental freedoms by political opponents and human rights defenders. This would involve steps towards the amendment or repeal of domestic laws restricting the freedoms of opinion, expression, association and movement.

28. As a first step, the Special Rapporteur would like to urge the Government of Myanmar to release urgently all political prisoners at risk (phase 1), including female political prisoners and those who are aged or ill. He has provided the Government with a detailed list of these three categories of detainee.

29. The Special Rapporteur hopes that the Government will find this suggested approach constructive; he would very much welcome an opportunity to discuss this approach further with the authorities.

B. Restrictions on the exercise of fundamental freedoms

30. The Special Rapporteur is seriously concerned about the lack of accountability in many cases of human rights violations. Often, the legal system prevents meaningful exercise of fundamental freedoms. The Special Rapporteur regrets to observe that the judiciary lacks independence and that it has provided a legal basis for abuses of power, arbitrary decision-making and exoneration of those responsible for human rights violations. The Special Rapporteur has also repeatedly expressed concern about the absence of due process in political trials and the denial of basic rights in detention. In the first four years of his mandate he acknowledged improvements in the penal system, in collaboration with the International Committee of the Red Cross (ICRC). During the period covered by this report, however, the Special Rapporteur has received allegations of poor conditions of detention without access to adequate food and medical treatment, arbitrary arrests

without warrants, incommunicado detention and ill-treatment in pre-trial detention. He has also received reports of defendants who have been denied the right to legal counsel and reports of political trials often being held in camera.

31. The authorities have continued to impose severe restrictions on the freedoms of movement, expression, association and assembly. The Special Rapporteur has received several reports alleging that the Government is involved in crackdowns on several initiatives by individuals to organize, even for non-political purposes such as fighting HIV/AIDS.

32. A series of criminal charges brought in April and July 2007 against seven human rights defenders in Henzeda township, Irrawaddy Division, and Pyay township, Pegu Division, have been brought to the attention of the Special Rapporteur.

33. Through an established legal framework,[6] the voices of opposition are being silenced. The Press Scrutiny and Registration Division (PSRD) of the Ministry of Information, examines every publication for anything perceived to be "anti-regime". Similar censorship boards exercise tight control over art, music, film, performance and all other forms of artistic expression. All authors, publishers, journalists and poets must submit a personal biography to the board of literary censorship. The board then investigates whether these individuals have any association with opposition political parties or connections to other people or groups deemed threatening by the regime. Anyone proved or suspected to have undesirable connections will be put on a blacklist and their work will not be allowed to be published.

34. In spite of the flexible censorship policies introduced by PSRD in 2005, Reporters sans frontières placed Myanmar 164th on its press freedom index, five places from the bottom, and the Committee to Protect Journalists ranked Myanmar as second on its list of "10 Most Censored Countries". These regulations were supposed to mark a reduction in censorship practices and a move towards a more open and independent press. While a number of new publishing licences have reportedly been granted during the past several years, very few of them have resulted in the establishment of viable publications given the excessive restrictions and bureaucratic demands of the Government of Myanmar.

35. In order to access information about what is really happening within their country, and the rest of the world, many citizens are forced to rely on sources of information that are prohibited by the national authorities. The main sources of outside information are the daily Myanmar-language radio broadcasts from abroad. In recent years, there has been an increase in the import of cheap, Chinese-manufactured short-wave radios so that more people have been able to access these stations. Meanwhile, the Government continues to crack down on other forms of

[6] The Official Secrets Act of 1923, the Burma Wireless Telegraphy Act of 1933, the Penal Code of Burma, the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions, the Emergency Provisions Act of 1950, the Printers and Publishers Registration Law of 1962, the State Protection Law of 1975 (the "Law to Safeguard the State from the Dangers of Destructive Elements"), the Television and Video Law of 1985, the Motion Picture Law and the Computer Science Development Law of 1996 and the Unlawful Associations Act (1908, amended in 1957 and in 1988), State Law and Order Restoration Council and Law 5/96 of 7 June 1996 on the National Convention.

outside communication. The military allegedly raided a number of areas across Myanmar as part of a campaign to confiscate cheap mobile phones smuggled in from neighbouring countries. The Internet also continued to be censored and extensive efforts are made to block free, independent e-mail services.

36. As noted above, the freedom of expression of those attending the National Convention appears to continue to be strictly curtailed. The code under which the Convention apparently continues to be run includes provisions that prohibit any criticism of the Convention.

37. The Government has also continued to tightly restrict, monitor and interfere with the movement of the Myanmar population. This was especially true for villagers in ethnic nationality border areas of Kayin and Mon States. In addition, members of certain communities, in particular Muslim groups and most notably the Muslim returnees (known as the Rohingyas) in northern Rakhine State, were unjustly targeted by such restrictions. The movements of politically active people in the country are also closely monitored. All residents in Myanmar are required to carry national identity cards showing their citizenship status, normal place of residence, date of birth, name of father and other personal information; since 1990 these cards have often been required to contain information on the holders' ethnicity and religion. As possession of a national identity card is mandatory in order to pass certain checkpoints, buy train or bus tickets, register with a local council outside one's normal place of residence, vote in any future election, or enrol in institutions of higher learning, those without such cards face severe restrictions on their freedom of movement.

38. Citizens with proper identification are generally able to travel freely within the country, except in areas of armed activity by ethnic nationalities. Receiving guests is tightly circumscribed throughout Myanmar. According to Government Order 1/90, everyone must register with the local Village or Township Peace and Development Council when they have guests at home.

39. The Government has apparently continued its attempts to limit and regulate international travel through punitive measures imposed upon illegal migrants and regular closures of official border crossings. Nevertheless, the country's borders with China, Thailand, Bangladesh and India remained permeable throughout the year and significant undocumented migration and commercial travel regularly took place. At the same time, foreigners, including humanitarian agencies seeking entry and access to certain areas of the country to deliver much-needed aid supplies, are also faced with significant restrictions on their freedom of movement.

40. The freedoms of assembly and association are also significantly curtailed by the Government. The Unlawful Associations Act of 1908 (afterwards amended) prohibiting unauthorized outdoor assemblies of more than five persons is enforced selectively. Despite obligations under domestic law and international treaties to recognize and respect the rights of workers, the authorities have banned trade unions and labour organizations in Myanmar. Many political parties and social organizations have also been outlawed by the regime. Those that are allowed to exist have been denied the ability to function freely and securely. In particular, the regime has targeted its political opponents. Over the course of the year the Government has continued to pressure NLD and Shan Nationalities League for Democracy members to resign and has arbitrarily renewed the house arrest of NLD leaders Aung San Suu Kyi and Tin Oo. In general, "freedom of association" exists only for Government-

approved organizations, including trade associations, professional bodies and Government-organized groups, such as the Union Solidarity and Development Association, which rely on coercion for their membership.

C. Human rights violations and accountability

41. During the course of his mandate, the Special Rapporteur has received allegations of human rights violations, including summary executions, torture, forced labour practices, sexual violence and recruitment of child soldiers. He has not received information about investigations into these violations and whether their perpetrators have been prosecuted. Victims have not been in a position to assert their rights and receive a fair and effective remedy. The Special Rapporteur regrets that in previous discussions in the General Assembly the Myanmar authorities have denied the allegations and denounced the accuracy of the Special Rapporteur's findings. As the Government has not invited the Special Rapporteur to visit Myanmar, he cannot be blamed for not having been able to verify these allegations.

42. Under international law, Myanmar has an obligation to thoroughly investigate grave violations of human rights, to prosecute those responsible for their perpetration and, if their guilt is established, to punish them. This means that those responsible for human rights violations must stand trial and that victims must obtain reparations.

43. The Special Rapporteur took note with great satisfaction of the conclusion on 26 February 2007 of an Understanding between the International Labour Organization (ILO) and the Government of Myanmar to provide a mechanism to enable victims of forced labour to seek redress. As of 23 May 2007, some three months after the establishment of the mechanism, the ILO Liaison Officer had received a total of 23 complaints. After reviewing them, he determined that eight cases involved a situation of forced labour. These cases were transmitted to the authorities for investigation and appropriate action. Additional information was needed to complete the assessment of five other cases. He rejected 10 cases, either because he did not consider that they involved forced labour (eight cases), or because the complainants were reluctant to agree to their complaints being transmitted to the authorities for investigation (two cases). The Special Rapporteur noted that some of the cases had been resolved successfully, demonstrating the value of the complaint mechanism. While the Special Rapporteur is aware of the current limitations of the mechanism in the present context, he strongly encourages the Government of Myanmar to collaborate with the Liaison Officer to strengthen its effectiveness.

44. The Special Rapporteur also noted that the ILO Governing Body decided to defer the question of an advisory opinion by the International Court of Justice, on the understanding that the necessary question or questions would continue to be studied and prepared by the Office. The Special Rapporteur still believes that this approach has the merit of placing the issue of accountability at the heart of the discussion on forced labour in Myanmar and should continue to be explored.

45. The Special Rapporteur noted with satisfaction that from 25 to 29 June 2007, the Special Representative of the Secretary-General for Children and Armed Conflict conducted a visit to Myanmar within the framework of Security Council

resolution 1612 (2005).[7] During the mission, the Myanmar committee on the Prevention of the Military Recruitment of Underage Children agreed to develop an action plan in collaboration with UNICEF and to set up a subcommittee with relevant line ministries on issues related to the reintegration of the affected children in accordance with the Principles and Guidelines on Children Associated with Armed Forces or Armed Military Groups (the Paris Principles). Under this action plan, training on child protection in armed conflict will also be conducted on a regular basis, especially with the Ministry of Defence. The Special Rapporteur commends the work of the Special Representative and expresses his appreciation for the positive outcome of her visit.

46. Arbitrary land confiscations throughout the country are another illustration of the culture of impunity prevailing in Myanmar. While the Government claims that land is "State-owned property", these confiscations appear to have several aims, including relocating civilian populations deemed to be sympathetic to the armed opposition; anchoring a military presence in disputed areas through the deployment or support of new Army battalions; and opening the way for infrastructure development projects, including the Lawpita dam, the three proposed Salween dams and the Day Loh dam in Toungoo District. The widening and deepening of the Salween and other important rivers is in progress and is already affecting the environment in Myanmar. The removal of rocks and other natural formations in rivers is affecting the fish, plants and shape of river beds and their banks. It is also affecting fishing and the lives of the people who both depend upon the activity for their living and the catch as a major source of food. The changes have forced people to move from their traditional homes. These projects and the extraction of natural resources, notably offshore gas, are providing various interest groups, including the military and foreign groups, with business opportunities; economic concessions, including for logging and mining, have been granted. Numerous forced evictions, relocations and resettlements have taken place, especially in rural areas but also in urban areas, most notably in connection with the move of the capital from Yangon to Pyinmana.

47. The Special Rapporteur views the ongoing large-scale confiscation of land as a matter of grave concern that will continue to have a dramatic impact on the political and economic stability of the country if it is not addressed. In addition, the widespread practice of smaller-scale land confiscation for nut plantations, as well as the forced labour required to farm the plantations, is having a deleterious effect on livelihoods throughout the country.

48. The Special Rapporteur also believes that non-accountability is one of the main underlying causes of the degrading economic and social conditions of rural farmers, who represent the majority of the population of Myanmar. Military operations in rural areas have contributed to the impoverishment of villagers. Often, the military rely on local labour and other resources as the result of the incapacity of the Government to deliver any form of support for their activities (the self-reliance

[7] The Security Council in its resolution 1612 (2005) requested the Secretary-General to implement the monitoring and reporting mechanism specified in his report on children and armed conflict (A/59/695-S/2005/72). The Secretary-General suggested that the six most grave violations should be particularly monitored (ibid., para. 68). Following the adoption of resolution 1612 (2005), the Office of the Special Representative of the Secretary-General for Children and Armed Conflict was tasked with the coordination of the Secretary-General's reports to the working group of the Security Council established in the same resolution.

policy). The Special Rapporteur has received many allegations of villagers being severely punished because they refused to perform forced labour, and of unlawful taxation and appropriation of their land, livestock, harvest and other property.

D. Breaches of international humanitarian law

49. Violations of the human rights of ethnic nationalities continue to be reported in Kayin State and with respect to other ethnic nationalities in eastern Myanmar (Mon, Shan and Kaya) and in northern Rakhine State. These violations have been perpetrated by military agents as well as by non-State armed groups. Military operations have had a serious impact on the civilian population. There are reportedly 540,000 internally displaced peoples in eastern Myanmar whose prospects of return and resettlement are minimal. The Government severely restricts access to them by United Nations agencies and other humanitarian actors. Internal displacement in Myanmar results not only from direct relocation or eviction orders issued by the military and civil authorities, but also from a combination of coercive measures such as forced labour, extortion and land confiscation which drive down incomes to the point that the household economy collapses and people have no choice but to leave home. As of 9 July 2007, the population of refugees from Myanmar in Thailand, including the registered population, asylum-seekers waiting for action by the Provincial Admission Board and students (i.e. children who are in the camps to attend classes) was estimated by the Office of the United Nations High Commissioner for Refugees (UNHCR) at 139,075.

50. Violence against unarmed civilians by the Myanmar military or non-State armed groups is a very serious concern. Direct attacks against civilians not taking an active part in hostilities are prohibited under international humanitarian law. Moreover, the Government of Myanmar and non-State armed groups have a positive obligation under international humanitarian law to take the appropriate measures to protect the civilian population against the effects of conflict.

51. The Special Rapporteur considers that many of the above-mentioned abuses in the conflict areas may constitute breaches of international humanitarian law. Among the most worrisome features of operations in the ethnic nationality areas is their disproportionate effect on civilian populations. In addition to the heightened risks posed by the widespread availability of small arms and light weapons and anti-personnel mines, the killing, terrorizing and displacement of civilians are common. It is timely to recall that article 3 common to the four Geneva Conventions provides that "[p]ersons taking no active part in the hostilities ... shall in all circumstances be treated humanely", without any form of discrimination.

52. On 23 February 2007, the Special Rapporteur issued a statement expressing serious concern about the ongoing military operations in Kayin State and their humanitarian and human rights implications. He had received testimonies from villagers who fled from Toungoo District and Eastern Bago Division. These villagers, who had already been forcibly displaced on several occasions, provided information that verified allegations received by the Special Rapporteur in 2006 on the magnitude of the humanitarian and human rights situation in these areas. As the result of the increase in military operations, the number of persons in need, including villagers facing food shortages, internally displaced villagers and refugees, significantly increased during the year.

53. On 29 June 2007, ICRC issued a public statement denouncing major and repeated violation of international humanitarian law committed against civilians and detainees, including the use of convicts as porters. The Special Rapporteur expresses his concern at those violations and his frustration about the restrictions imposed on ICRC, which has made it impossible for ICRC staff to move around in the affected areas and to enter places of detention in accordance with their standard procedures. He regrets that the dialogue between the Government and ICRC has not been fruitful and hopes that the situation will improve.

E. Discrimination against minorities

54. While the Special Rapporteur is not in a position to state that ethnic minorities in Myanmar are targeted because of their religion or belief, he notes that in northern Rakhine State, the Muslim returnees (Rohingyas) have long been discriminated against, and were denied citizenship under the 1982 Citizenship Law. They continue to flee to Bangladesh, seeking asylum. They are subjected to serious abuses, especially forced labour (e.g. for the construction of roads, bridges, model villages and military facilities and for camp maintenance and portering) and arbitrary taxation. New developments observed in recent months included increased restrictions on movement, as it became very difficult to obtain a travel pass after the new village-level administration was put in place, and the closing of a number of mosques that had been repaired or enlarged without permission.

55. On 2 April 2007, six special procedures of the Human Rights Council[8] called publicly on the Government of Myanmar to take urgent measures to eliminate discriminatory practices against the returnees in northern Rakhine State and to ensure that no further discrimination was carried out against persons belonging to that community. They reminded the Government of its obligation to protect all individuals within its territory and subject to its jurisdiction from any form of discrimination. They also reiterated the important role of minority rights in promoting equitable development, peace and stability, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

56. The Special Rapporteur praises UNHCR for its five-year effort to mitigate the impact of statelessness on Muslims returnees to Myanmar by initially providing 35,000 persons in northern Arakan State with identity documents (Temporary Registration Certificates).

57. The Special Rapporteur encourages the Government of Myanmar to repeal or amend the 1982 Citizenship Law and to ensure the compliance of its legislation with the country's international human rights obligations, including article 7 of the Convention on the Rights of the Child and article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, and to guarantee that the right to nationality as enunciated in article 15 of the Universal Declaration of Human Rights and article 5 of the International Convention on the Elimination of

[8] The Special Rapporteur on the situation of human rights in Myanmar; the independent expert on minority issues; as well as the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; on adequate housing; on the right to food; and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

All Forms of Racial Discrimination finds meaningful expression within Myanmar's borders.

F. International human rights and humanitarian obligations

58. The Government of Myanmar has an obligation to cooperate for the advancement of human rights under the Charter of the United Nations, which provides for the promotion of "universal respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

59. Myanmar is party to the four Geneva Conventions of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime and the Convention Concerning the Protection of the World Cultural and Natural Heritage. It has not signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the United Nations Convention against Corruption.

60. The Special Rapporteur is particularly pleased to note that Myanmar submitted its combined second and third reports to the Committee on the Elimination of Discrimination against Women in June. The Special Rapporteur believes that the Government of Myanmar will benefit from the expertise of the Committee's members in view of the widespread sexual violence against women and girls in the country. He encourages the Government of Myanmar to seek the Committee's assistance to implement the Committee's recommendations meaningfully. The initial and second periodic reports under the Convention on the Rights of the Child have been submitted to the Committee on the Rights of the Child and the combined third and fourth periodic report is due in August 2008. The Special Rapporteur believes that this represents an opportunity for the Government of Myanmar, working with civil society, the United Nations system and the Committee on the Rights of the Child, to engage in a discussion on sexual violence against girls and on the recruitment of child soldiers with a view to submitting its report in the best possible conditions.

61. Both committees have examined Myanmar's reports and adopted recommendations and concluding observations providing guidance to the Government on how to fulfil its international human rights obligations. The Special Rapporteur reiterates that recommendations by treaty bodies for protecting and promoting human rights in Myanmar represent an important tool for policymakers and development practitioners. It is therefore important for the Government of Myanmar and its partners to follow up on these recommendations. They will help to measure political will, obstacles encountered and progress made, to identify new trends, and to complement the efforts made by the Government towards the protection and promotion of human rights.

V. Concluding remarks

62. The human rights concerns enumerated in the present report are largely similar to those highlighted by the Special Rapporteur last year. The Special Rapporteur deplores the fact that the Government, despite several requests, has not invited him to visit the country. For this reason he is not able to assess any improvements or to verify the accuracy of the allegations received.

63. The Special Rapporteur is convinced that Myanmar would benefit from more active cooperation with his mandate, particularly under the terms of reference as redefined by the Human Rights Council for the functioning of special procedures mandates. He has insisted that his obligation to comment publicly on allegations of human rights violations does not exclude a constructive dialogue with the Government. The combination of these two elements could contribute to a new dynamic for the improvement of the situation of human rights in the country.

64. As the Special Rapporteur has indicated in previous reports, it would be a great mistake to consider easy the challenges facing Myanmar in promoting political transition while at the same time effectively promoting the most basic human rights. Besides the efforts of the Government and civil society, they continue to require the collaboration of the United Nations and the international community. Each time that the Government refuses access to the Special Rapporteur, one possible vehicle for dialogue — the possibility of cooperation in the area of human rights — is severely curtailed.

65. Recommendations formulated by the General Assembly, the Commission on Human Rights, the Secretary-General and his former Special Envoy, as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies, have regrettably not been implemented.

VI. Recommendations

66. **The Special Rapporteur's recommendations made in earlier sections of the present report, as well as in his previous reports, remain valid in view of the prevailing situation in Myanmar.**

67. **The Special Rapporteur calls on the Government of Myanmar:**

(a) **To release urgently all political prisoners at risk, including female political prisoners and those who are aged and ill, as a first step towards the release of all political prisoners;**

(b) **To resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups, to complete the drafting of the constitution;**

(c) **To ensure that all officials who commit human rights violations are strictly disciplined and punished;**

(d) **To put an end to the restrictions on the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives;**

(e) To seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles;

(f) To take steps to improve conditions of detention;

(g) To authorize access to the conflict-affected areas by the United Nations and associated personnel, as well as personnel of humanitarian organizations, and guarantee their safety, security and freedom of movement;

(h) To ensure a mutually agreeable operating environment for humanitarian agencies in accordance with the guiding principles provided by the United Nations Country Team on 7 March 2006;

(i) To respect its obligations under international human rights and humanitarian law in the areas affected by armed conflict;

(j) To continue its efforts with ILO towards the effective implementation of the national mechanism established to receive complaints of forced labour;

(k) To pursue its collaboration with the Special Representative of the Secretary-General on Children and Armed Conflict;

(l) To work with civil society, the United Nations system and the Committee on the Rights of the Child for the submission of its third and fourth periodic reports under the Convention on the Rights of the Child;

(m) To follow up on the recommendations and concluding observations adopted by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.

68. **The Special Rapporteur calls on the international community and the United Nations:**

(a) To promote a framework of principles with respect to Myanmar to enable Member States to pursue a plurality of strategies and cooperation in accordance with their particular strengths and capacities;

(b) To build on existing programmes of humanitarian assistance and support for health, education and human rights, in particular through support to civil society development;

(c) To engage in a serious dialogue with the Government of Myanmar on an adequate response to the situation of conflict in eastern Myanmar.